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June 13, 2006

VIA FACSIMILE & REGULAR MAIL

Nick Miller
Water Distribution Section
Idaho Department of Water Resources
PO Box 83720
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Re: IDWR Recommendations for Operation of Water District No. 34, Big Lost River
Your Letter Dated May 19, 2006.

Dear Mr. Miller:

We have been asked to write this letter in response to your request of May 19, 2006. We wish first to express appreciation to you and other officials of IDWR, including the director, for your prompt and diligent response to the matters raised in our initial letter of March 17, 2006. We also want to assure that we are in complete agreement with most of the proposals and suggestions you have made.

Having said that, we need to point out that we do not agree that lack of knowledge regarding rules of water delivery in Water District 34 or lack of knowledge of how Water District 34 operates is either an accurate characterization of the underlying source of the trouble in Water District 34, or that saying so will do much to address the misperformance of watermaster duties and paucity of complete and accurate records. While we do not disagree that many, probably most, water users do not possess more than a very elementary knowledge, at best, of the applicable rules and district operation, there are nevertheless a good number of water leaders in the basin who possess a quite substantial and thorough knowledge and understanding of such matters.

The problem that needs to be addressed is that the watermaster and his staff have not been adequately performing his statutory duties for a long time, and thus far we have seen no evidence

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that he will do so in the future. We have previously expressed that our main objective is not removal of Bob Duke as watermaster; rather, it is that the duties of the Water District 34 watermaster be strictly, diligently and thoroughly performed in accordance with the requirements of the statutes and applicable rules. There exists a continuing and intensifying dispute of long duration between water users in the upper portions of Basin 34 and those in the lower basin. There is pending district court litigation between these factions in which IDWR is or probably soon will be, directly involved as a party. To the extent the watermaster and the manager of the irrigation district continue to favor and do the virtual bidding of the upper basin interests, our clients will actively and adamantly continue to seek the removal of the watermaster.

You are personally aware of the most recent difficulties experienced by the recharge committee for this basin in attempting to persuade the watermaster to deliver available water supplies for such recharge. Instead, he and the manager of Big Lost River Irrigation District seemed to insist on characterizing the extra water supplies as "free water" that they can deliver to the water users to whom they are personally loyal, without any accounting. We insist this practice be stopped and corrected.

There is but one source to look for fairness and correct legal administration to be enforced. It is not the advisory committee. That committee is composed of water users from both factions and it has no legal authority to do much beyond advise. As we understand the law in Idaho, we must look to the director of IDWR to instruct, educate and direct the watermaster and to enforce the requirements of the statutes and rules. Without the very direct and diligent involvement of IDWR personnel in the ongoing duties of the Water District 34 watermaster and his staff, we do not expect any better performance than previously. Thus far, we have observed nothing to convince us there has been any appropriate change. The only report we have seen (on recharge) is essentially non-responsive and contains little helpful information.

To our knowledge, there has not yet been any "random verification of reported diversion measurements this season". We still believe this is absolutely necessary. We agree there is a high level of mistrust and we think the answer is a fairly high degree of oversight, at least during the initial training and education period.

We continue to believe this effort could be augmented by designating a qualified independent consultant. We would be happy to submit names, but we need some assurance that IDWR will deputize him with adequate authority to access the places he needs to go. We also believe the district ought to fund this effort. Our clients are as concerned about budgeting as anyone. But reasonable expenditures for such services will, in our opinion, pay long term dividends in ensuring accuracy and proper administration, which, in time will reduce mistrust.

Nick Miller
Water Distribution Section
Idaho Department of Water Resources
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Whether additional assistance is necessary, we cannot say. We generally feel that the water users are willing to adequately fund whatever IDWR determines to be reasonably necessary.

At this point, we think there should definitely be a hearing and that a main item of that hearing should include the submission by the watermaster of his written plan to comply with the recommendations and requirements of IDWR. It should include written documentation of what has been done and measurements kept to date. We are well into the irrigation season and have a great concern that we may soon find ourselves with one more year of inadequate records for assessment and voting purposes.

We will look forward to your continuing attention to this matter.

Yours very truly,



Kent W. Foster

c: Gary Spackman
Tim Luke